IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2460 OF 2005

Union of India. ... Petitioner.

V/s.

ICICI Bank Ltd. and others. ... Respondents.

M.I.Sethna, senior counsel with R.Ashokan with
A.M.Sethna i/b. T.C.Kaushik for the petitioner.

Virag Tulzapurkar with Prateek Saksaeia i/b.
Amarchand Mangaldas and S.A.Shroff & Co.
for respondent No.1.

Mr.Kalpesh Parekh i/b. Praena Thakkar & Co.
for respondent No.4.

CORAM : V.C.DAGA AND J.P.DEVADHAR, JJ.

DATED : 15th April 2005.

P.C. :

. This petition is directed against the order dated 7th April, 2005 passed by the Presiding Officer, Debt Recovery Tribunal-III, Mumbai whereby two applications moved by the Union of India through Customs Department contending that they have a prior right over the goods; which are in the custody of the Court Receiver, appointed in Original Application No.162 of 2002 by the Debt Recovery Tribunal ("DRT" for short) as such they are entitled to have permission to attach and confiscate the goods for the recovery of their dues as their recovery will rank higher in priority than that of

the respondent No.1 - bank. In the second application, prayer was made to issue directions to the Court Receiver/ Recovery Officer not to advertise sale of the properties of respondent No.2 i.e. M/s.Daewoo Motors since the appeal preferred by the petitioner being Appeal No.692 of 2004; challenging adverse order of the DRT refusing to implead Customs Department as a party respondent in the proceedings which were pending before DRT, Mumbai.

2. The factual matrix reveals that respondent No.2 - M/s.Daewoo Motors (original importer) imported plant and machinery/ raw material under various licences of EPCG Scheme and executed bonds in favour of President of India considering themselves liable to pay the customs duty etc. in the event of breach of conditions of the exemption notification.

3. The importer/ respondent No.2 herein; committed breach of various conditions of exemption notification under EPCG Scheme/Licence. The Customs Authorities passed an adjudication order and demanded customs duty of Rs.676.48 crores (approx.).

4. The respondent No.1 herein; M/s.ICICI Bank Ltd. being creditor has also filed the Original Application No.102 of 2002 against respondent No.2 M/s.Daewoo Motors for the recovery of their debt before DRT, Mumbai and to enforce mortgage and/or hypothecation charge on the immovable and movable properties created by respondent No.2 - M/s.Daewoo Motors in their favour.

5. During the pendency of the aforesaid Original Application No.102 of 2002 for the recovery of Rs.511,02,84,697/- came to be allowed by judgment and order dated 30th August 2004. By very same order the DRT rejected intervention application of the Customs Department against which appeal preferred before Debt Recovery Appellate Tribunal ("DRAT" for short) is pending.

6. Pending aforesaid appeal before the DRAT, two applications referred to in the opening part of the judgment were moved by the petitioner, which, as already stated hereinabove, came to be rejected by order dated 7th April 2005. With the result, the Customs Department has been denied right to confiscate the property imported by the importer in view of the subsequent breaches of the exemption

notification committed by it. At the same time prayer to stay the sale of the properties of respondent No.2, which are liable to be attached and confiscated by the Customs Department came to be rejected.

7. Being aggrieved by the aforesaid order, present writ petition is filed under Article 226 of the Constitution of India to challenge the said order with prayer for interim relief in terms of prayer clause (c) therein; to restrain by order and injunction, the DRT and its officers and subordinates from taking any further action pursuant to the impugned public notice dated 16th March 2005, whereby bids for sale of the properties of M/s.Daewoo Motors were invited..

8. Mr.M.I.Sethna, learned senior counsel appearing for the petitioner - revenue submitted that if the respondent No.1 - ICICI Bank is allowed to proceed with the execution and dispose of the properties pursuant to public notice dated 16th March, 2003, then, the right of the Union of India i.e. petitioner to confiscate illegally imported goods would be frustrated and that third party rights would be created in the goods as such it

would be reasonable and in the interest of justice to stay the sale of the properties pending adjudication of their rights.

9. Mr.Tulzapurkar, learned counsel appearing for respondent No.1 - ICICI Bank at the outset raised an objection to the maintainability of petition contending that the impugned order dated 7th April 2005 passed by DRT-3, Mumbai is an appellable order before DRAT as such without considering the merits of the submissions advanced by Mr.Sethna for Union of India, it would be reasonable to relegate the petitioners to the appellate remedy. He further submits that appeal filed by Union of India through Customs Department against order of DRT dated 30th August, 2004 is very much pending in DRAT. In that view of the matter, it would be reasonable to expect the DRAT to deal with the whole matter in a more effective manner. He submits that subject to the discretion to be exercised by DRAT entire dispute can be heard and decided on the floor of DRAT. He, thus, submits that considering the peculiar facts of this case, this Court should not exercise discretion in favour of the petitioner and direct the petitioner to approach an appellate authority under the Recovery

of Debts Due to Banks and Financial Institutions Act, 1993.

10. Mr.Sethna, learned counsel for the petitioner - Revenue while reacting to the aforesaid submission, submitted that the petitioner would have no objection to go before the appellate forum, viz.; DRAT but in the meanwhile the respondent No.1 bank should not be allowed to act upon the public notice dated 16th March, 2005 and DRT, its officers and/or subordinates also should be restrained from acting pursuant to the public notice dated 16th March, 2005.

11. Mr.Tulzapurkar appearing for respondent No.1, initially, agreed to stay its hand so as to enable the petitioner to file appeal before DRAT and also agreed not to proceed pursuant to public notice dated 16th March, 2005 till disposal of the interim application to be moved by the petitioner before DRAT and one week thereafter provided time-schedule is fixed by this Court. Accordingly, time-schedule was indicated by this Court. With the time-frame indicated, parties agreed to file minutes of the order in the post-lunch session.

12. However, in the post-lunch session, learned counsel for respondent No.1 bank expressed his inability to file minutes of the order and agreed to submit to the orders of this Court. Thus, in the peculiar circumstances as enumerated herein; this order is being passed.

13. It is not in dispute that the impugned order is an appellable order. It is also not in dispute that appeal against earlier order dated 30th August, 2004 is already pending before DRAT for adjudication. The DRAT is, thus, seized of the matter.

14. The Public notice dated 16th March, 2005 makes it clear that the tenders or offers or bids are to be submitted by 25th April, 2005. The same are to be on 26th April 2005 at 11.30 a.m. It is, thus, clear that upto 25th April, 2005 offers are not be opened.

15. In the above circumstances, it would be reasonable for the petitioner to file an appeal before DRAT by 20th April 2005 along an application for stay. In the event appeal along with application for stay is filed, the DRAT shall

consider and hear the appeal and/or stay application in exercise of its own jurisdiction by 27th April, 2005 and shall decide the same at any rate on or before 28th April, 2005. It is made clear that till the hearing of the application for stay the respondent No.1 and respondent No.12 shall not to proceed to open the offers or bids received pursuant to the public notice dated 16th April, 2005. In the event of adverse order, the respondent No.1 and 12 shall not act upon the said order or public notice dated 16th March, 2005 for a period of one week from the date of order of DART i.e. 11th May, 2005. So far as the merits of the matter are concerned, we do not propose to express our opinion since the matter is to be heard by DRAT on its own merits.

16. Petition, accordingly, stands disposed of in terms of this order leaving all rival contentions open with no order as to costs.

(V.C.Daga, J.)

(J.P.Devadhar, J.)